

1 applicant guilty of the underlying offense. 28 U.S.C. § 2254(e)(2); *Baja*, 187 F.3d at 1078. *See*,
2 *e.g.*, *Buckley v. Terhune*, 397 F.3d 1149, 1158 (9th Cir. 2005) (petitioner failed to satisfy
3 § 2254(e)(2) where the evidence he presented to the federal court was not “unknown or
4 unavailable to the petitioner in state court”); *Bragg v. Galaza*, 242 F.3d 1082, 1085 (9th Cir.),
5 *amended by* 253 F.3d 1150 (9th Cir. 2001) (court of appeals precluded from remanding case for
6 an evidentiary hearing, despite concerns about gaps in the record, where petitioner failed to
7 develop the factual basis for his claim in state court). If, on the other hand, the petitioner has not
8 failed to develop the facts in state court, the district court may proceed to consider whether a
9 hearing is appropriate, or required under *Townsend v. Swain*, 372 U.S. 293 (1963), *modified by*
10 *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992). *Baja*, 187 F.3d at 1078.

11 In this case, Petitioner has failed to establish that his request for an evidentiary hearing
12 falls within the narrow exceptions to the rule limiting evidentiary hearings in habeas cases.
13 Specifically, he offers no explanation why the evidence needed to support his ineffective
14 assistance claim could not have been developed during the course of the state proceedings.
15 Moreover, even if further factual development is required, expansion of the record, rather than an
16 evidentiary, might be the appropriate route. Accordingly, Petitioner’s motion for an evidentiary
17 hearing (docket no. 15) is DENIED without prejudice. If the Court determines that further
18 factual development is necessary, it will revisit the issue whether an evidentiary hearing must be
19 held.

20 IT IS SO ORDERED.

21 DATED: _1/10/06_____


JEFFREY S. WHITE
United States District Judge